

ERWIN BOARD OF COMMISSIONERS  
REGULAR MINUTES  
SEPTEMBER 5, 2013  
ERWIN, NORTH CAROLINA

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The Board of Commissioners for the Town of Erwin with Mayor Patsy Carson presiding, held its Regular Meeting in the Town Hall on Thursday, September 5, 2013 at 7:00 P. M. in Erwin, North Carolina.

Board Members present were: Commissioners William Turnage, Randy Baker, Norma Ennis, Frank Taylor, and Ricky Blackmon.

Board Member absent was: Commissioner Frankie Ballard.

Town Manager Richard Douglas, Town Clerk Cynthia Patterson and Town Attorney Mac Hunter were present.

Mayor Patsy Carson called the meeting to order at 7:00 P. M.

Commissioner Frank Taylor gave the invocation.

Those present recited the Pledge of Allegiance.

### **APPROVAL OF AGENDA**

Commissioner Baker made a motion to approve the Agenda as is and was seconded by Commissioner Ennis. The Board voted unanimously.

### **CONSENT ITEMS**

Commissioner Baker made a motion to approve (**Item A**) Approval of Regular Minutes on 08/01/13 and was seconded by Commissioner Turnage. The Board voted unanimously.

### **PUBLIC HEARING**

#### **Z-2013-002 MAP AMENDMENT TO REZONE 10070 US HWY 421 FROM RD TO B-2**

Commissioner Turnage made a motion to open the Public Hearing at 7:01pm and was seconded by Commissioner Taylor. The Board voted unanimously.

Erwin Planner Kathy Blake came forward and presented. Ms. Blake informed the Board that this is a request to rezone from RD (Rural District) to B-2(Highway Business) an approximate 0.52 ac. tract (PIN **0598-21-5637.000**) also known as 10070 US 421 S. The parcel is currently zoned RD (Rural District). The parcel has a cinder block building that, in the past has been used for a service station and garage. Mrs. Royal's residence is on a separate parcel to the rear at 10080 US 421.

The property is surrounded, on the same side of US 421 S, by parcels zoned RD and used for residential. Directly across US 421 S, the property is zoned B-2 and is undeveloped.

The **1999-2010 Land Use Plan** designates US 421 as an “Entrance Corridor”. While the Land Use Plan map is hard to read in this area, The Land Use Plan lists the following goals as applicable for entrance corridors:

1. **Goal #1** Quality growth and development along US 421 corridor
2. **Goal #2** Enhance the appearance of all entrance corridors (Highways 55, 217, 421, 82, Denim Dr, West J St, and Red Hill Church Rd.

**RD (Rural District)** is to promote low-density residential and agricultural uses. The regulations of this district are intended to protect the agricultural sections of the community from an influx of uses likely to render them undesirable for farms and future development and to insure that residential developments dependent on private wells and septic tanks will occur at sufficiently low densities to insure a healthful environment.

**B-2 (Highway Business)** is to accommodate a wide variety of large commercial, wholesale, and retail businesses.

At their August 19<sup>th</sup> meeting, Planning Board voted to recommend:

1. That the proposed amendment is consistent with officially adopted land development plans, and
2. Approval of Z-2013-003 as presented.

Mayor Carson asked if anyone would like to speak in favor of the proposed zoning map amendment to please come forward.

No one came forward.

Mayor Carson asked if anyone would like to speak against the proposed zoning map amendment to please come forward.

No one came forward.

Commissioner Turnage made a motion to close the Public Hearing at 7:05pm and was seconded by Commissioner Blackmon. The Board voted unanimously.

Commissioner Blackmon made a motion that the proposed amendment is consistent with those documents that constitute the officially adopted land development plan and other applicable plans and was seconded by Commissioner Turnage. The Board voted unanimously.

Commissioner Blackmon made a motion to approve the proposed zoning amendment from RD to B-2 at the location of 10070 US Hwy 421 and was seconded by Commissioner Turnage. The Board voted unanimously.

CU-2013-002 CONDITIONAL USE PERMIT FOR A PRIVATE SCHOOL IN B-2 AT  
413 E. JACKSON BLVD.

Commissioner Turnage made a motion to open the public hearing at 7:06pm and was seconded by Commissioner Taylor. The Board voted unanimously.

Erwin Planner Kathy Blake came forward and presented. Ms. Blake informed the Board that applicant Andrea Malthouse submitted a request for a conditional use permit for a private school, K-12 at 413 E. Jackson Blvd. The parcel has 7.2 acres and is zoned B-2 (Highway Business). Section 9-4030.3 in the Zoning Ordinance lists public facilities, which includes private schools, as a conditional use. The site was previously used for a sales lot for manufactured housing and storage buildings.

The applicant included an “illustrative plot” (not scaled) of the site with this permit application. No additional driveways are being requested. No parking lot lighting is noted on the site drawing.

Directly across E. Jackson Blvd. is an open field and the former Glover Sales lot. On the same side of US 421:

1. to the east, are vacant lots of the Riverside Professional Park
2. to the southwest, are wooded, undeveloped lots
3. to the west, is a wooded lot but is developed with a commercial building that is occupied by **Carolina Sleep & Respiratory**

The 1999-2010 Land Use Plan designates this parcel as an “Entrance Corridor”. The Land Use Plan lists the following goals as applicable for entrance corridors:

1. **Goal #1** Quality growth and development along US 421 corridor
2. **Goal #2** Enhance the appearance of all entrance corridors (Highways 55, 217, **421**, 82, Denim Dr, West J St, and Red Hill Church Rd.

While there are landscaping requirements for designated entrance corridors in the Zoning Ordinance, existing developed properties may be exempted per Section 9-4041.28.

Also, NCDOT requires that the applicant apply for driveway permits due to the change in use.

Staff has some possible conditions that the Board may wish to consider.

1. Fencing around playground
2. Location of the playground
3. Curb Stops for the parking area
4. Landscaping

Commissioner Baker asked what was the number of required parking spaces for this particular use. Ms. Blake stated that the number of students verbally was going to be 26 this year however Ms. Malthouse stated that it could be allowed up to 50 students with 2 or 3 teachers.

Mayor Carson asked if anyone would like to speak in favor of the proposed Conditional Use Permit to please come forward.

Applicant Andrea Malthouse came forward. Ms. Malthouse began the private school 19 years ago across from this proposed lot and was closer to Hwy 421 than this proposed location. She

stated that she will only have 2 teachers and cars would stay all day. The parents were told what entrance to use when picking up students. Should not be a parking concern at all.

Bus will drop off students after school from Gentry and Erwin Elementary. We will have care for these students from 3pm – 6pm Monday thru Friday. Basically help with homework and give them a snack until parents get off of work.

Commissioner Turnage asked about the safety hazard of the playground not being fenced in. Ms. Malthouse stated that this would not be an issue at this time due to the fact the youngest student is 7 years old. We are going to add kindergarten eventually and will fence in that area.

Ms. Malthouse stated that she will have 2 full time employees with 1 part time. Hours will be from 8:30am to 2:30pm, before care will begin at 7am to 6pm for afterschool care.

Kids will bring their lunch. Will not prepare food on site.

Mayor Carson asked if anyone would like to speak against the proposed Conditional Use Permit to please come forward.

No one came forward.

Commissioner Baker made a motion to close the Public Hearing at 7:19pm and was seconded by Commissioner Turnage. The Board voted unanimously.

Commissioner Baker informed the Board that he had some concerns with the parking issues at this location. He did not have any concerns where the teachers will be parking however he does not agree in having any parking in the front of the structure when you will have a school bus using this driveway to drop off kids. The handicap access is on the other side of the building away from the visitor parking is noted. The parking should be located behind the front line of the building so it will give people the opportunity to move without backing into the drop off area. The playground area should be located at the rear of the building and should be fenced in. The landscaping is not an issue.

Mayor asked the Board if we could open up the public hearing again.

Commissioner Baker made a motion to open the public hearing at 7:25pm and was seconded by Commissioner Turnage. The Board voted unanimously.

Ricky Day came forward and spoke to the Board. Mr. Day stated that the playground area, you would want to be where you can see someone coming in. You don't want to be in the rear of the building and not see anyone. Suggested in moving it back in line with the building.

Eunice Hymes came forward and spoke to the Board. Ms. Hymes had concerns with the fencing of the playground area.

Commissioner Blackmon made a motion to close public hearing at 7:35pm and was seconded by Commissioner Baker. The Board voted unanimously.

Commissioner Baker made a motion that the proposed conditional use application meets all of the Findings of Fact in the affirmative and was seconded by Commissioner Blackmon. The Board voted unanimously.

Commissioner Baker made a motion that the proposed amendment is consistent with those documents that constitute the officially adopted land development plan and other applicable plans and was seconded by Commissioner Turnage. The Board voted unanimously.

Commissioner Baker made a motion to approve the CU-2013-002 for a Private School in B-2 at 413 E. Jackson Blvd with the following conditions: (1) As demonstrated on the map, Visitor Parking Area be located at the side of the building where the current handicap accessible gate is, all require parking be designated within that area and teacher parking to the opposite side of the building for all parking spaces designated with approved parking stops (2) the playground area will be located below the front of the building and recommend it to be a fenced in area at least 4ft height in fencing with self-closing self-accessing gate recommends the fenced area match the square footage of the existing principal building.

Commissioner Baker amended the above motion to remove condition (2) if the entire playground area and equipment is removed from the property and there is no playground and was seconded by Commissioner Blackmon. The Board voted unanimously.

**OLD BUSINESS**

**PRODUCE STAND REQUIREMENTS**

Erwin Planner Kathy Blake came forward and presented. Ms. Blake stated that this was sent back to Staff for modifications where it went back to the Planning Board in August. The revised proposed amendments included:

- In Definitions, inclusion of 3 new definitions: 1) temporary on-premise produce stands, 2) mobile produce and food vendor stands and 3) seasonal use
- Under Accessory Uses, a new accessory use: “on-premise produce stand”
- In R-D, added “See Accessory Uses – On-premise produce stands”
- In Temporary Zoning Compliance, added 1) mobile produce or mobile food vendors and 2) an exemption from temporary zoning compliance certification for temporary on-premise produce stands
- Removal of the word “meeting” in the first sentence of Section 9-4041.14

The proposed zoning text amendments allow for the selling of produce in 4 different scenarios:

1. The Zoning Ordinance currently allows for the selling of products produced on premises in the Rural Districts, although on-premise produce stands are accessory uses/structures that are "...restricted to rear and side yards".
2. In the commercial/business and industrial districts, allowing with temporary produce zoning permits for mobile produce stands to sell from lots that already have a primary business with written permission from the property owner.
3. In all residential zones, residents can setup, without a zoning permit, a seasonal and temporary produce stand to sell their produce.
4. Produce sold in commercial buildings are treated as retail businesses.

Planning Board voted to amend the proposal by adding a 2 month waiting period after the expiration of the 5 month temporary zoning permit and then the Board voted to recommend approval of the proposed text amendments as amended.

Since both the Planning Board and Board of Commissioners meetings, staff had further discussions about produce stands, zoning, and privilege licenses that have included the Town Manager, the Police Chief, the Town Attorney, the Town Planner, and the owner of an existing mobile produce stand. Specifically concerning mobile produce stands and/or mobile food vendors, the consensus is that a temporary zoning permit appears to be the least costly for such vendors and more appropriate than a peddlers permit since these vendors do not go door-to-door and they provide their product at the time of purchase.

Staff has been told that farms in this area can have produce available for sell from February through December, therefore the 5 month temporary produce stand zoning permit followed by a 2 month waiting period could cause a hardship for the mobile produce stand operators.

At this time, staff recommends removing mobile food vendors from consideration to enable staff to further explore how the Town would like to integrate mobile food vendors into regulations.

Staff recommends that mobile produce stands are defined as temporary by allowing operation 4 days or less during a 7 day week, thus deleting the 5 month operation period with a 2 month waiting period before another temporary produce stand zoning permit could be reissued.

Both the Planning Board and the Board of Commissioners discussed the merits of fees. Currently the adopted Fee Schedule has Zoning Permits (regular and temporary) at a fee of \$50. Per the discussions heard from both Boards, staff recommends consideration of a separate Temporary Produce Stand Zoning Compliance fee of \$15.

Options for Consideration:

Do the Commissioners desire to send mobile food vendors back to staff and Planning Board? If so, and since staff has had a minimum of 3 recent mobile food vendors inquire about requirements for setting up in Erwin, the Board of Commissioners may wish to consider a moratorium of ninety (90) days on issuing new peddler's permits for mobile food vendors.

Commissioner Baker made a motion to approve the ZT-2013-003 Produce Stand Requirements and was seconded by Commissioner Blackmon. The Board voted unanimously.

Commissioner Baker made a motion to place a 90 day moratorium on issuing new peddler's permits for mobile food vendors until it's included in the Zoning Ordinance Requirements and was seconded by Commissioner Blackmon. The Board voted unanimously.

**NEW BUSINESS**

**TOWING AGREEMENT**

In order to enforce the Town's junk and nuisance vehicle ordinance at minimal expense, staff is recommending approval of towing contracts with three local towing companies: Faircloth Wrecker Service, Dean's Towing & Recovery, and Quick Service (copies of the agreements signed by each company are attached for your review). These companies are currently on the wreck rotation with the Erwin Police Department and would not directly charge the Town for the handling and storage of junk/nuisance vehicles. In practice these towing companies would remove vehicles from properties only after Town staff completes the identification and notification process; the towing companies would be authorized under contract to charge up to \$175 for vehicle towing and \$35 per day vehicle storage if an individual chooses to retrieve a towed vehicle. The towing companies can ultimately take possession of the vehicles as provided under State law.

After some discussion, Commissioner Baker made a motion to approve the Towing Agreement for Faircloth Wrecker Service, Dean's Towing & Recovery, and Quick Service submitted by Staff and was seconded by Commissioner Blackmon. The Board voted 4 for, 1 against (Commissioner Taylor) and 1 absent (Commissioner Ballard).

**SELECTION OF CONSULTANT FOR LAND USE PLAN**

Town Manager Richard Douglas informed the Board there is appropriated \$30,000 in the 2013-2014 operating budget for this project. Staff sent out proposals with four consultants responding. They were Benchmark, Wooten Company, N Focus, and Holland Firms. Two of the firms submitted bids over \$30,000 and could not justify the additional expenditure for that work so the two left were Benchmark and Holland.

Commissioner Turnage made a motion to accept Benchmark as the Consultant for Land Use Plan and was seconded by Commissioner Baker. The Board voted unanimously.

**DOWNTOWN PARKING LOT RENOVATION PROJECT**

Engineer Tyrus Clayton came forward and spoke to the Board. Mr. Clayton stated that this project has been ongoing for 2 years. The project, designed by C.T. Clayton, Sr. PE, Inc., is funded in part by a \$75,000 USDA Rural Business Enterprise Grant, with \$23,300 provided from the Town's Capital Project Fund as approved in the 2013-14 annual budget. The project as bid consists of 5700 square feet of asphalt milling and paving and 1500 linear feet of curb and gutter, and landscaping was included as an alternate item. Please note that due to cost, the placement of utilities underground was not included in the project (staff recommends rather than committing any additional local funds to underground utilities related to the downtown parking lot that future consideration be given to needed streetscape improvements along H Street).

We advertised this for bids Tuesday a week ago for the first time and solicited the project out into four national plan rooms, so it went out on the internet as well as publication and actually talked with six different contractors. We only had two bidders show up. Per the state law and USDA requirements we had to reject those bids at that time and re-advertised for a week later which was this past Tuesday and received 2 bids which was from Johnson Brothers Paving and Fred Smith Company. The two bids are very close together. Johnson Brothers Paving was the lowest bid on both the Base Bid and Alternate.

Mr. Clayton reviewed this with Staff and the recommendation would be move forward with the full project. This does exceed the budget that was approved previously however; fund this out of Capital Reserves. This would also be Engineer Tyrus Clayton's recommendation as well.

Mr. Douglas informed the Board that \$75,000 in grant money with \$23,300 in Capital Project Fund will be short \$50,000. If this is approved tonight, Staff would come back next month under Consent Items for a budget amendment.

Commissioner Turnage made a motion to approve the Downtown Parking Lot Renovation Project and accept the lowest bidder Johnson Brothers Paving for the Base and Alternate Work and was seconded by Commissioner Baker. The Board voted unanimously.

**STREET RESURFACING RECOMMENDATIONS**

Town Engineer Bill Dreitzler came forward and presented. Mr. Dreitzler stated that Staff is requesting from the Board of Commissioners approval to move forward with an advertisement for bids for the following Powell Bill-related improvements:

- ❖ Resurfacing of the following streets (4900 linear feet at an estimated cost of \$175,000)
  - E Street, from 14<sup>th</sup> Street to 18<sup>th</sup> Street
  - 8<sup>th</sup> Street, from Old Post Road to E. Denim Drive
  - Wilson Street, from E. Denim Drive to Raiford Road



- ❖ Replacement of culverts and related ditch improvements at Dunn-Erwin Road/River Drive and Dunn-Erwin Road/Burton Avenue, as initial steps in addressing East Erwin drainage issues

These recommendations are based on the pavement condition survey recently completed by Withers & Ravenel, review by the Town Engineer, and staff review and discussion. In the 2013-14 operating budget, the Board of Commissioners appropriated \$336,250 for the Powell Bill fund (\$138,000 annual state allocation and \$198,250 fund balance appropriation). If approved, formal bid award by the Board of Commissioners would be requested at the October regular meeting.

Staff recommends approval of advertising for Powell Bill resurfacing and drainage improvements as outlined above.

Commissioner Baker made a motion to approve the submitted list of streets and recommendations and send out for bids and was seconded by Commissioner Blackmon. The Board voted unanimously.

### **PUBLIC COMMENTS**

Bill Schuh of the Planning Board came forward and presented pictures to the Board of problems throughout the Town concerning dilapidated houses and buildings. Mr. Schuh would like to set up a workshop with the Town Manager and Town Planner to find a solution. The most noticeable are on Hwy 421, Denim Drive and 13<sup>th</sup> Streets.

Greta Grayton came forward and addressed the Board. Ms. Grayton asked if we had a Disaster Recovery Plan. Are we educating the citizens of where the shelters are located and what to do if services is interrupted. Ms. Grayton is aware of the shelter at Triton High School however there is a shelter on this side of Hwy 421.

### **ADJOURNMENT**

Commissioner Blackmon made a motion to adjourn at 9:40pm and was seconded by Commissioner Taylor. The Board voted unanimously.

**MINUTES RECORDED AND TYPED BY  
CYNTHIA B PATTERSON TOWN CLERK**

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**Patsy Carson,  
Mayor**

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**Cynthia B. Patterson, CMC  
Town Clerk**